

1 Paul J. Riehle (SBN 115199)
2 paul.riehle@faegredrinker.com
3 **FAEGRE DRINKER BIDDLE & REATH LLP**
4 Four Embarcadero Center
5 San Francisco, California 94111
6 Telephone: (415) 591-7500
7 Facsimile: (415) 591-7510

8 Christine A. Varney (*pro hac vice*)
9 cvarney@cravath.com
10 Katherine B. Forrest (*pro hac vice*)
11 kforrest@cravath.com
12 Gary A. Bornstein (*pro hac vice*)
13 gbornstein@cravath.com
14 Timothy G. Cameron (*pro hac vice*)
15 tcameron@cravath.com
16 Yonatan Even (*pro hac vice*)
17 yeven@cravath.com
18 Lauren A. Moskowitz (*pro hac vice*)
19 lmoskowitz@cravath.com
20 Vanessa A. Lavelly (*pro hac vice* forthcoming)
21 vlavelly@cravath.com
22 M. Brent Byars (*pro hac vice*)
23 mbyars@cravath.com
24 **CRAVATH, SWAINE & MOORE LLP**
25 825 Eighth Avenue
26 New York, New York 10019
27 Telephone: (212) 474-1000
28 Facsimile: (212) 474-3700

Attorneys for Plaintiff Epic Games, Inc.

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN FRANCISCO DIVISION**

21 **IN RE GOOGLE PLAY STORE**
22 **ANTITRUST LITIGATION**

23 THIS DOCUMENT RELATES TO:

24 *Epic Games Inc. v. Google LLC et al.,*
25 Case No. 3:20-cv-05671-JD

Case No. 3:20-cv-05671-JD
Case No. 3:21-md-02981-JD

26 **DECLARATION OF STEVEN**
27 **ALLISON IN SUPPORT OF**
28 **PLAINTIFF EPIC GAMES, INC.'S**
MOTION FOR A PRELIMINARY
INJUNCTION

Date: June 2, 2022 at 10:00 a.m.
Courtroom: 11, 19th Floor
Judge: Hon. James Donato

1 I, Steven Allison, declare as follows:

2 1. I am the Vice President and General Manager of the Epic Games Store (“EGS”)
3 organization within Epic Games, Inc. (“Epic”). I submit this declaration in support of Epic’s
4 Motion for a Preliminary Injunction. The contents of this declaration are based on my personal
5 knowledge. If called as a witness, I could and would competently testify thereto.

6 2. I joined Epic in 2018 after over 20 years working in the gaming industry,
7 including roles at Telltale Games, TNA Entertainment, Midway Games, Atari, and Accolade.

8 **Epic**

9 3. Epic develops and distributes entertainment and utility applications for personal
10 computers, gaming consoles, and smart mobile devices. Epic also operates a store for the
11 distribution of personal computer apps, and develops and licenses Unreal Engine, a powerful
12 software suite available to third-party developers that allows them to create three-dimensional
13 and immersive digital content for apps (including Android apps), movies, and other three-
14 dimensional environments. Epic develops multiple applications, including *Fortnite*, *Fall Guys*,
15 *Rocket League*, the Bandcamp app, and apps that support Epic’s Unreal Engine, such as Live
16 Link Face, which enables users to capture facial animation with their mobile phones.

17 4. I was hired by Epic to lead the development and launch of its online digital
18 storefront, EGS, with the mission of distributing high quality Epic and third-party games. EGS
19 charges a 12% commission from the developers that choose to use Epic's payment solution,
20 allowing developers to keep 88% of revenues from game development.

21 5. Providing fair compensation to creators is critical to Epic’s mission. Since our
22 launch, EGS has continued to grow the number of users, developers, and games on the platform.
23 Some of our biggest titles include *League of Legends*, *Genshin Impact*, *Grand Theft Auto* and
24 *Tiny Tina’s Wonderlands*. Several of those games are offered on EGS for free. EGS has over
25 194 million registered users and 62 million monthly average users, and it has provided over 765
26 million free games to users.

1 **Bandcamp**

2 6. In my role overseeing EGS, I have responsibilities related to the evaluation and
3 integration of new acquisitions. I was the lead on the deal team at Epic that oversaw its recent
4 acquisition of Bandcamp.

5 7. Bandcamp's Android app is an important piece of the Bandcamp business, as I
6 understand that consumers increasingly engage with the internet solely through mobile
7 applications rather than web browsers.

8 **Epic's Acquisition of Bandcamp**

9 8. On March 2, 2022, Epic publicly announced the acquisition of Bandcamp. A true
10 and correct copy of Epic's announcement is attached as Exhibit A.¹ The deal closed on
11 March 17, 2022. At that point, Bandcamp's employees became Epic employees. Today,
12 Bandcamp is part of Epic and the Senior Director of Bandcamp, Ethan Diamond, reports to me.

13 9. There are several reasons why Epic acquired Bandcamp.

14 10. First, Bandcamp developed and runs a creators-first business that aligns with
15 Epic's own creator-focused approach. In particular, since its launch in 2008, Bandcamp has
16 prioritized an "artists-first" revenue share model on purchases of digital and physical goods. For
17 digital goods, Bandcamp receives only a 10% revenue share after the artist reaches \$5,000 in
18 sales, and 15% before that. The company also allows artists to enable Bandcamp's Name-Your-
19 Price feature, which allows fans to pay above the minimum selling price for an item, passing
20 even more money directly to artists.

21 11. Second, Epic intends to help Bandcamp grow and expand. Bandcamp's Android
22 app in particular is a key piece of Epic's growth strategy for Bandcamp. Native mobile
23 applications, rather than web browsers, are extremely important because users predominantly
24 interact with the internet exclusively through apps. Simply put, I believe mobile applications are
25 the future of the internet.

26
27 ¹ [https://www.epicgames.com/site/en-US/news/bandcamp-joining-epic-games-to-](https://www.epicgames.com/site/en-US/news/bandcamp-joining-epic-games-to-support-fair-open-platforms-for-artists-and-fans)
28 [support-fair-open-platforms-for-artists-and-fans](https://www.epicgames.com/site/en-US/news/bandcamp-joining-epic-games-to-support-fair-open-platforms-for-artists-and-fans)

1 12. Specifically, in the near term, Epic plans to grow the Bandcamp app into a global
2 platform that more users and artists can access, including in emerging markets around the world
3 where consumers are particularly reliant on mobile devices to access content online. Currently,
4 the Bandcamp app is only available in three languages. Epic plans to expand to ten languages
5 within the next year, and it is actively working on this expansion.

6 13. Based on Epic's plans to grow Bandcamp, Epic expects that within the next year,
7 it can substantially grow platform-wide monthly active users ("MAUs"), currently around 15
8 million, thereby growing Bandcamp's ecosystem of engaged creators, fans, and high-quality
9 content.

10 14. Third, and most importantly, Bandcamp is a critical component of Epic's vision to
11 build out a creator marketplace ecosystem for content, technology, games, art, music and more.
12 Specifically, Epic's creator marketplace will provide content creators across industries access to
13 everything that they need to create experiences and sell content online. Bandcamp in particular
14 will allow musicians to connect with content creators in search of high-quality music content for
15 their projects across all media.

16 15. Epic is working rapidly to expand and attract creators and users from other areas
17 of content creation to build its creator marketplace. Music is essential to this offering, as it is
18 critical to content creation.

19 16. Bandcamp—with its massive pool of independent artists—is an integral part of
20 Epic's vision for a creator-to-creator marketplace. Epic is working to grow the Bandcamp
21 community in order to connect musicians and creators.

22 17. Epic intends to have a large audience of artists and fans across platforms, deep
23 user engagement and high quality content, because that will help create the right incentives to
24 encourage more artists, fans, and content creators to make use of Epic's services. Music
25 services—and Bandcamp, in particular—are essential to that vision.

1 **Google's New Payments Policy Will Seriously Harm Epic**

2 18. Beginning June 1, 2022, Google will require Bandcamp, and other apps like it, to
3 exclusively use Google Play Billing for payments for digital goods and services, and pay a
4 revenue share to Google.

5 19. This leaves Epic with the choice to (i) try to integrate Google Play Billing and pay
6 Google a revenue share, (ii) remove the in-app option to purchase digital goods, or (iii) be kicked
7 off of the Google Play Store.

8 **Integrating Google Play Billing and Paying Google Revenue Share Will Seriously**
9 **Harm Epic**

10 20. If forced to pay Google a revenue share, Epic would have to either pass those fees
11 on to consumers, making the app less attractive; pass those fees on to artists, threatening our
12 ability to continue to expand Bandcamp's artists-first model around the world and execute our
13 growth plans; or run Bandcamp's Android business at a long-term loss.

14 21. Putting aside the issue of revenue share, integrating Google Play Billing would
15 cause a number of issues for the Bandcamp Android app. I understand that Ethan Diamond,
16 Bandcamp's Senior Director, and Shawn Grunberger, Bandcamp's Director of Technology, are
17 submitting declarations that provide more detail on these issues. Given these issues, it is
18 possible that not all existing and prospective users will want to use the Bandcamp app, which
19 could impact our ability to substantially grow Bandcamp's MAUs within the next year and
20 maintain its creators-first vision.

Removing Digital Sales Within the Bandcamp App Will Seriously Harm Epic

22. Likewise, if Epic is forced to remove the in-app option to purchase digital goods, Bandcamp users will have no way to purchase digital music within the app. Instead, Bandcamp app users will need to leave the app to make a purchase on a web browser. Due to this increased friction, I expect that not all users will want to engage with this process, causing churn such that some users may stop using the Bandcamp app altogether. In addition, if Bandcamp fans are unable to purchase digital music in the app, I expect that some artists may stop engaging with Bandcamp, or may leave the service altogether.

23. This will hinder Epic's ability to grow Bandcamp's Android app into a global platform with more fans and artists, which is essential to build the audience base and momentum necessary to connect musicians more broadly with creators in search of high-quality music. Without an engaged ecosystem of fans, artists and high-quality content—which is essential to Epic's vision and the primary reason that Epic acquired Bandcamp—Epic will be behind its competition and it will be difficult to recover.

24. Compliance with Google's new payments policy—whether by integration of Google Play Billing and paying Google's revenue share or removing digital sales within the Bandcamp app—would result in a negative impact on Bandcamp's lifeblood—the artists. If Epic's pool of music creators is diminished, Epic's ability to attract other content creators will also suffer. Those ripple effects would have immediate and long-term consequences for our ability to grow the Bandcamp community and connect musicians more broadly to content creators across platforms and industries.

1 25. Epic's reputation as a champion of content creators is also at stake. I understand
2 that several artists and fans expressed their anxiety about Epic's acquisition of Bandcamp and
3 what it would mean for Bandcamp's "artists-first" model. Epic is working hard to grow the
4 Bandcamp business and does not intend to sacrifice any of Bandcamp's "artists-first" principles.
5 In fact, Epic acquired Bandcamp in part because of the companies' shared vision of building the
6 most open, artist-friendly ecosystem in the world. However, if Google forces Epic to comply
7 with its new payments policy, materially changing the Bandcamp app for the worse within only
8 three months of the acquisition, fans and artists will blame Epic for the harm to their favorite
9 music app.

10 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
11 and correct and that I executed this declaration on April 28, 2022, in Cary, North Carolina.



Steven Allison